

The meeting opened at 6:41 p.m.

Present were: Brown (Chair); Magenheim (Clerk); McDonough & Bargnesi (Members); Oltman, Rechisky, Bordonaro and Wilson (Associate Members).

Petition No.: Z-14-77

Premises affected: 16 Arundel Street

Petitioner: Soltes

Participating Members: Brown, McDonough, Magenheim, Bargnesi, Bordonaro

Pamela & Jeffrey Soltes, owners, represented themselves in their request for a variance from Art. VIII, §4.1.2 &/or for a special permit under Art. VIII, §3.3.5 to construct additions & alterations that will not meet the side or rear setback requirements. Also present was their builder, Bob Druin. The house, built in approximately 1916-20, is in the SRA district and has a 29.2' setback, where 27.2' is proposed at the rear. They will remove the existing family room and construct a 2-story addition 2' closer to the lot lines. The existing deck will remain. The new second story will be further back than the 1st story. It was reviewed by Preservation Commission in June (an email from Preservation Chair is in the packet). There being no other questions or comments from the Board or the public, Bordonaro made a motion to waive the site view & close the public hearing. McDonough seconded the motion & the Board voted (5-0) to waive the view & close the public hearing. The Board then proceeded to deliberate. Bordonaro & Magenheim voiced their support of the proposal. Brown noted that the house predates the zoning bylaw & is therefore a pre-existing, non-conforming structure. The proposal is consistent with the neighborhood. Magenheim made a motion to find that granting a special permit under Art. VIII, §3.3.5 is appropriate with the conditions that the construction be completed in substantial conformance with the plot plan & drawings submitted and to deny the variance from Art. VIII, §4.1.2 as moot. McDonough seconded the motion & the Board voted (5-0) to grant the special permit with conditions & deny the variance as moot. Bordonaro will write the decision.

Petition No.: Z-14-81

Premises affected: 38 Park St

Petitioner: Wise

Participating Members: Brown, McDonough, Magenheim, Bargnesi, Bordonaro

Jeffrey Wise, leaseholder, represented himself in his request for a modification of Decision Nos. 3989 & Z-14-112 to remove the conditions that the special permit runs with the tenant &/or for a special permit under Art. VIII, §3.1.3.C.12.b for a fast-food restaurant. Wise explained the history of the property; specifically that he is still trying to sell his business, but cannot due to the tenancy restriction from the ZBA decisions. He wants the special permit to be general, not specific to a particular tenant/operator. He has a buyer in place but cannot transfer the business due to the ZBA conditions. There will be no modifications to the physical space. Wise agreed that he is agreeable to all previous conditions, except the special permit being specific to a specific operator. The Board discussed condition #3 regarding the unknown lease term/expiration. Wise stated that the term is 3 years & that he is currently in the 2nd year + several months. He noted that the new operator / leaseholder will have a new lease & term, this is not a sublet. Brown voiced reluctance of granting a special permit without a specifically named operator. Wise informed the Board that his successor is the owner of Amore Pizza, who has been in the business 25 years with two other locations. The Board asked for the corporate name of the successor and whether they have seen & agree to all other conditions. Wise stated that they have & agree to them. Brown asked Wise to provide the legal name of the buyer to secretary to include in a modification of the prior decisions. There being no other questions or comments from the Board or the public, Magenheim made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to

close the public hearing. The Board then proceeded to deliberate. McDonough made a motion to grant the requested modification of Decision Nos. 3989 & Z-14-112 so that it reads "Jeffrey Wise and/or his successor". Magenheim seconded the motion & McDonough amended it to include denial of the newly requested special permit as moot. Magenheim seconded the amended motion & the Board voted (5-0) to approve the requested modification. Magenheim will write the decision.

Petition No.: Z-14-85

Premises affected: 37 Porter Rd

Petitioner: Mason Associates

Participating Members: Brown, Magenheim, Bargnesi, Oltman, Rechisky

Attorney Mark Johnson & Engineer Bill MacLeod were present, along with Todd Wacome, owner, requesting a dimensional special permit for historic preservation under Art. VIII, §7.9 to subdivide a lot at the corner of Manning Way & Porter Rd with an historic house. Brown disclosed the McDonough had recused herself from the case & left the room because she had retained Attorney Johnson for a private matter. He designated Oltman to sit in McDonough's place. Johnson submitted revised plans as a result of input from Preservation Commission regarding proposed additions to the historic house, asking for discretion on the door since they are still discussing it with Preservation. Johnson also submitted a revised plot plan depicting a slightly altered footprint, noting that there are no changes to the lot lines as submitted with the packet, a summary of why this proposal qualifies for the dimensional special permit, and a denial letter for a raze permit. MacLeod reviewed the plan: a corner lot created by Approval Not Required (ANR), historic Manning House will remain at 37 Porter Rd, and new lot on Manning Way complies with SRB, 7/2/14 plan shows slightly smaller footprint. Both lots will conform: one to SRB requirements, one to 7.9 requirements. Karen Herman, of 50 Sunset Rock Rd & Chair of the Preservation Commission, stated the commission's support of this application. Herman noted that the historic home, built in 1758, is listed on the National Register and has been occupied by the Manning family until 10 years ago, since which time the house has been vacant. The Board discussed the water damage, lack of maintenance, and the site visits conducted by Preservation Commission within the past 12 months. The rear ell may not be salvageable, but could be reconstructed. The proposal also maintains the streetscape, which is an important part of historic preservation. The Board also discussed the specific work / level of restoration reviewed by Preservation, much of which is interior and will be included in the preservation restriction to be recorded. Brown voiced concern about preservation efforts & the time that the State process takes to approve & record a restriction; he feels more specific language should be part of the ZBA decision suggesting that Preservation Commission submit a document setting forth what is to be preserved. Herman agreed. The Board discussed the demolition delay process as administered by Preservation Commission, as well as their review for exterior changes to the structure. Johnson noted that interior changes are not under the purview of Preservation Commission. Herman added that since this house is on the National Register, it may also be protected on the inside. The Board then discussed the various forms of preservation; from photographs to actual preservation of the structure or elements thereof. Herman noted that they have photographed the interior & found no sill damage or insects. A carpenter has examined the house, but not a structural engineer. There being no other comments or questions from the Board or the public, Brown gave Johnson a summary of the Dimensional Special Permit for Historic Preservation bylaw (Art. VIII, §7.9). Johnson submitted a draft preservation restriction, which he offered to revise for the current case. Bargnesi made a motion to close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate the matter. Brown reviewed the process & how this application meets all the requirements of the bylaw adding the finding that the compromised status of the house is such that it may fall down prior to demolition. Rechisky made a motion to grant a special permit with the required findings and conditions, finding that it is in harmony with the character of the neighborhood and will preserve the historic house with language setting forth some adherence to the Preservation Commissions recommendations regarding the exact preservation work to be done. Magenheim seconded

the motion & the Board voted (5-0) to approve the special permit with conditions. Brown will write the decision. Johnson offered to submit some language regarding the preservation work.

Petition No.: Z-14-17

Premises affected: 15 County Rd

Petitioner: South Andover Development

Participating Members: Brown, Magenheim, Oltman, Rechisky

This is a continued public hearing. No one was present on behalf of the petition. Oltman reminded the Board that they requested a revised plan. Brown added that he requested evidence of the pre-existing, non-conforming status of the lot. Magenheim made a motion to continue the hearing to 8/7/14. Rechisky seconded the motion & the Board voted (4-0) to continue the hearing to 8/7/14.

Approval of Minutes

5/1/14 – Wilson made a motion to approve the minutes of 5/1/14. Oltman seconded the motion & the Board voted unanimously to approve the minutes of 5/1/14.

5/14/14- Magenheim made a motion to approve the minutes of 5/14/14. Oltman seconded it & the board voted unanimously to approve the minutes of 5/14/14.

6/5/14 – Brown informed the Board that he had made some revisions to the draft minutes & preferred to defer a vote until 8/7/14 at which time the minutes could be revised.

Petition No.: Z-14-30

Premises affected: 64 Summer St

Petitioner: ZCR Realty Trust

Participating Members: Brown, Oltman, Rechisky

Chair Brown gave an overview of the process to date: the public hearing was held & then closed, the Board continued the deliberation, after which time the Board received a memo from the Inspector of Buildings encouraging the Board to re-open the hearing. Because it was received after the hearing was closed, it shouldn't have become part of the record. Subsequently, the Board voted to re-open the hearing & continued it to July. In light of all of the emails & letters of support, Brown reminded everyone that this is not a discussion of the developer's reputation or whether or not to preserve an historic building. It is about subdividing a lot & the ZBA is not standing in the way of preserving the structure.

Attorney Mark Johnson, on behalf of the petitioner, submitted a memorandum including letters from the Inspector of Buildings & the Planning Director; a denial of a raze permit, 3 emails of support, 1 letter of support, an email of support from Mike Hellmann & Mary Lalley, 41 Whittier St, and Assessor's Maps showing lot sizes. Johnson pointed out that the proposal is comparable to surrounding lots. He also submitted the zoning bylaw on dimensional special permits for historic preservation. Mark Ratte, developer, reviewed the revised plans: no change in lot lines, eliminated hayloft door & masonry chimney – replaced with 2' deep shed type projection without foundation to hide a gas fireplace. Chris Clemente, Inspector of Buildings, informed the Board that he met with Planning staff, Preservation Commission members to discuss the intent of the bylaw: allowing the creation of non-conforming lots by decreasing the dimensional requirements. This case is virtually identical to previous cases & would create non-conforming lots by special permit. The Board discussed the Inspector's interpretation that both the parent lot & newly created lots can have reduced dimensional requirements and the fact that more than two non-conforming lots could be created depending on the total

amount of land. Brown summarized the Planning Director's memo stating that the bylaw is consistent with the Master Plan goals.

Attorney Brian Vaughn, representing Mr. & Mrs. Singer, 58 Summer St., submitted a memo in opposition. He argued that a variance is required, the Inspector's analysis of Section 7.9.4.7 is flawed and 2 special permit applications are required. The ZBA does not have to grant a special permit, even if the criteria are met. He emphasized that the necessity to preserve the structure must be proven & that this application is for replication rather than preservation. The Board discussed the original intent of the bylaw (to move historical structures & without a 2nd special permit for the 2nd non-conforming lot, the bylaw isn't reconciled) & the criteria to interpret the statute employed by the courts so as not to render another part of the bylaw absurd. Johnson submitted findings the Board needs in order to grant the special permit & summarized the different subsections of Section 7.9 emphasizing that this section of the bylaw was established to preserve historic houses that includes a trade-off: subdividing the lot & placing a preservation restriction on the historic structure(s). He noted that it will be a benefit to the town, is in harmony with the neighborhood, has the Planning Director's support that it is in keeping with the master plan, and meets the bylaw as well as the basis for granting a special permit. Brown debated that 7.9.4.7 can't create a new lot that will be non-conforming. The Board discussed the intent and purpose of dimensional requirements in Sections 4.1.2 & 7.9. Johnson argued that there are categories of dimensional requirements set forth in Appendix A, Section 4.1.2 and that 7.9 encourage & provide the mechanism for subdivision of lots. Vaughn disagreed.

Amanda Singer, 58 Summer St., asked whether Preservation Commission conducts a site visit, goes inside the house and considers the landscape, as in other cases. She added that 64 Summer Street has been changed significantly over the years & questioned the value in its preservation. Karen Herman, Preservation Chair, explained that they conducted a site visit, but did not go inside the house (it is not required to go inside the structure). She reminded the Board of the intent of the bylaw: to preserve houses in situ and that Preservation Commission is mandated to determine which houses are historically significant, as well as to make a determination if a special permit is appropriate. The Board questioned whether all houses are recommended for preservation. They are not. Brown reminded the Board that Preservation's recommendation is not a mandate to the ZBA to approve an application.

Lisa Camosa, 66 Summer St., voiced concern over the fact that the streetscape will change & decrease green space, negatively impacting abutters. She questioned whether the division of the lot is appropriate. Joanna Reck, Rock Ridge Road resident & Preservation Commission member, commented on the potential for a new house that could be built on the lot if the historic house is not preserved without consideration of green space. Pat O'Neil, 40 year resident at 49 Summer St., spoke in favor noting the mixed housing stock in the neighborhood. David Shorey, 113 Pint St., Michael Corbett, of Gudrun Dr, Emily & Phil Gatchel, 10 Stevens Circle, Tracy Bodette, 84 Summer St., Tony Dyer, 9 Torr St., & Jane Griswold, formerly of Andover, all spoke in favor. Mr. Singer, 58 Summer St., argued that the proposed dwelling fits in the neighborhood because it already exists as the barn on his property. He is opposed.

Brown asked for the sense of the Board: close & deliberate or close & continue the deliberation. Wilson, Oltman, Bargnesi, & Rechisky all agreed to close the hearing & start deliberation. Wilson made a motion to close the public hearing. Bargnesi seconded the motion & the Board voted (5-0) to close the public hearing. The Board then commenced deliberation.

The Board discussed the bylaw, the changes made to this proposal during the public hearing process & the similar River Street case. The lots on River Street are both undersized. Brown noted that he wrote the decision. He now believes that his analysis was wrong & that the parent parcel must conform to the district's dimensional requirements in 4.1.2, but the new lot can be reduced as set forth in 7.9. The Board discussed whether the historic structure has to be on the conforming lot. The Board also considered that the lots can be created legally, as well as the input of the direct abutters and the special permit criteria, along with the streetscape. While the findings to grant a special permit can be met, the Board felt a moral conflict in maintaining the intent & purpose of the bylaw. Brown commented that demolition is a voluntary act & that this bylaw is not the only means of preservation. Wilson noted other similar cases in town & that as written the bylaw allows the creation of these two lots. Rechisky felt it would improve the house and neighborhood.

Brown feels that the historic structure is allowed on a smaller lot, but the new lot must meet the zoning district's dimensional requirements. Wilson stated that the two lots meet the dimensional requirements in Section 7.9.4.7. Oltman pointed out that on smaller lots in the town center it is more difficult. The Board discussed continuing the deliberation. Bargnesi made a motion to continue the deliberation to July 24, 2014 at 6:30 pm, location to be determined. Wilson seconded the motion & the Board voted (5-0) to continue the deliberation.

There being no other business of the Board, Rechisky made a motion to adjourn the meeting. Wilson seconded the motion & the Board voted unanimously to adjourn the meeting at 9:31 p.m.